

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 2:19-cr-00013
v.)
) Chief Judge Crenshaw
)
GEORGIANNA A.M. GIAMPIETRO)

**MOTION OF GOVERNMENT COUNSEL CONCERNING
ATTENDANCE AT UPCOMING STATUS HEARING**

The United States of America, by and through the United States Attorney for the Middle District of Tennessee hereby requests that the Court allow government counsel, Jennifer E. Levy, to participate in the June 19, 2020, status hearing by teleconference, rather than appearing in person. In support of this Motion, the government states the following:

1. Ms. Levy is a trial attorney in the Counterterrorism Section, National Security Division, United States Department of Justice, based in Washington, D.C., and co-counsel of record in this case. It is her understanding that the Court expects all counsel of record to attend all scheduled hearings in person.
2. During the current COVID-19 pandemic, employees of the Department of Justice in general, and of the National Security Division in particular, have been instructed to work remotely to the fullest extent, and not to engage in non-essential travel in order to maintain good personal health, minimize exposure to individuals who may have contracted the coronavirus and prevent the spread of the virus. The Department of Justice has not yet reached the first phase of returning to normal operations in the National Capital Region, and the Department's current work posture relating to

employee travel must be strictly limited to the most mission critical situations. Department of Justice trial attorneys are assigned to pending cases around the country. When proceedings in pending cases have been scheduled to occur during this pandemic, courts around the country have held status conferences and oral arguments using videoconferencing or teleconferencing, rather than conducting in person proceedings in recognition of the public health guidance to avoid the spread of the coronavirus. All personnel involved in such proceedings have participated through videoconferencing or teleconferencing, using call-in conference lines. Ms. Levy has participated in proceedings in Arizona and in Colorado within the past six weeks via teleconferencing. The United States Supreme Court has also adopted teleconferencing as the method of handling oral arguments scheduled before the Court during the past several months.

3. In order to attend the June 19, 2020, status hearing in this case in person, Ms. Levy would need to travel by air from Washington, D.C. to Nashville, Tennessee. Air travel during the current coronavirus pandemic presents particular risks to the health and welfare of people. The Centers for Disease Control (“CDC”) actually advises that “[b]ecause travel increases your chances of getting infected and spreading COVID-19, staying home is the best way to protect yourself and others from getting sick.”

<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>

(emphasis included). As the CDC notes, air travel requires spending time in security lines and airport terminals, which can bring travelers into close contact with other people and with frequently touched surfaces. There are no required limitations to the number of travelers on particular flights. There is a real inability to maintain social

distancing once on an aircraft. Air travel presumes prolonged exposure within a confined space to individuals traveling from a variety of places where the virus may or may not be prevalent. People are exposed to contagious germs on aircraft surfaces with which a traveler has direct contact, including tray tables, seat belt buckles, arm rests and overhead compartments. A New York Times article, published on June 8, 2020, described the results of a survey of epidemiologists concerning their views on when they believed that it would be safe to undertake a number of everyday activities, including air travel. Only twenty percent of those who responded said that they would travel by air this summer. Forty-four percent said that they expected to wait at least three months to travel by air, and another thirty-seven percent responded that they would wait a year or more to take a flight. An epidemiologist for the United States Department of Veterans Affairs who responded that she would wait for more than a year to take a flight was quoted as saying, “[u]nless I have absolutely no choice, I wouldn’t travel by the airplane anytime soon.” An epidemiologist from South Carolina who responded that she would not take a flight until the winter was quoted as analogizing an aircraft to “[a] flying tube of germs.” *See* Margot Anger-Katz, Claire Cain Miller and Quoctrung Bui, “When 511 Epidemiologists Expect to Fly, Hug and Do 18 Other Everyday Activities Again,” New York Times, June 8, 2020, available at <https://www.nytimes.com/interactive/2020/06/18/upshot/when-epidemiologists-will-do-everyday-things-coronavirus.html>.

4. The spread of COVID-19 continues throughout the country and reported cases in Tennessee are currently increasing without leveling off. Tennessee is one of 14 states recording their highest ever seven day average of new coronavirus cases, according

to a study released by The Washington Post on June 8, 2020. The number of new cases confirmed by Tennessee state health officials has been rising steadily since May 1, 2020. An average of 456 new cases per day were reported across the state on June 8, 2020, a 51% increase over the previous four weeks. Health officials have reported a spike in the number of new cases specifically in Nashville. On Monday, Mayor John Cooper announced that he was postponing the transition from Phase Two of the city's recovery plan to Phase Three, previously scheduled for this week, because Metro Nashville's two week recovery average is on the rise. Specifically, Metro Nashville averaged 93 new cases per day during the last week in May, but this past week, the daily average reportedly jumped to 110 new cases each day, with an unusually high number of 184 new cases reported on June 9, 2020. *See generally* Michael Osborne, "New COVID-19 case rates are headed higher in Nashville and statewide," June 9, 2020, available at www.wmot.org/post/new-covid-19-case-rates-are-headed-higher-nashville-and-statewide#stream/0.

5. According to the Daily Metro COVID-19 Press Update for June 11, 2020, posted on the website <https://www.asafenashville.org>, Metro Public Health Department officials announced a total number of 6627 confirmed cases in Nashville/Davidson County, an increase of 56 in the past 24 hours. The patients with confirmed cases range in age from one month old to 100 years old. A total of 80 people have died after contracting COVID-10 and 5110 others have recovered from the virus. The Metro Public Health Department reported that of the number of people tested for COVID-19, nine and one-half percent of those tested came back with positive results.
6. The spread of coronavirus and the increase in confirmed cases in a growing number

of states, including Tennessee, underscores that the pandemic is a continuing public health threat that should be contained through all reasonable means. Under these circumstances, the government respectfully requests that the Court permit Ms. Levy to participate in the upcoming June 19 status hearing remotely, through teleconferencing. This alternative to in person attendance would protect Ms. Levy from potential exposure to the coronavirus during her travel to Nashville, during the time spent in Nashville for the hearing and during her return trip to Washington, D.C. It would also eliminate the risk that Ms. Levy's trip to Nashville would expose others in the Washington, D.C. region to COVID-19 upon her return.

WHEREFORE, the government respectfully requests that the Court grant its motion to permit Ms. Jennifer Levy to participate in the June 19, 2020 status hearing via teleconferencing instead of personally appearing before the Court on that date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2020 I electronically served one copy of the government's Motion of Government Counsel Concerning Attendance at Upcoming Status Hearing, which will send a Notice of Electronic Filing to counsel for defendant.

s/Ben Schrader

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